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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly
situated,

Plaintiff,

v.

SUTTELL & ASSOCIATES;
MIDLAND FUNDING, LLC; MARK
T. CASE, and JANE DOE CASE,
husband and wife, KAREN HAMMER
and JOHN DOE HAMMER

Defendants.

Case No.: CV-09-251-EFS

PLAINTIFF'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL DISCOVERY
RESPONSES TO PLAINTIFF'S
SECOND SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
PROPOUNDED TO DEFENDANTS
SUTTELL & ASSOCIATES

MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL DISCOVERY

- 1

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On August 8, 2010, the Plaintiff filed a Motion to Compel the Suttell Defendants to produce documents requested¹ in Plaintiff's Second Interrogatories and Second Requests for Production (Ct. Rec. 82). The Suttell Defendants failed to respond to Plaintiff's Motion to Compel. However, on September 13, 2010, Suttell produced an additional Six thousand Seven hundred Thirty Six (6,736) pages of documents purporting to respond to the Plaintiff's Second Request for Production along with a letter from Suttell's counsel identifying the documents produced and restating Suttell's continuing objections to Plaintiff's other discovery requests. The Suttell defendants have not produced any supplemental responses to Plaintiff's Interrogatories and Requests for Production regarding net worth. The following is Plaintiff's reply to Suttell's Counsel's response letter dated September 13, 2010 and the accompanying supplemental responses.

Interrogatories #5 and #8 and Request for Production #3

While Suttell has provided a list of employees who worked on the *Midland v. Gray* State Court case, it continues to object to disclosing for each employee since 2005, the employee's:

- 1) Name
- 2) Phone number

¹ Suttell was served with these Plaintiff's discovery requests on June 12, 2010. Answers and responses were due from Suttell on July 12, 2010.

- 1 3) Job description
- 2 4) Rate of pay
- 3 5) Billing rate; and
- 4 6) Dates of employment

5 The Plaintiff has alleged that Defendant Suttell charged an unreasonable
 6 attorney's fee to thousands of defendants in Washington State Court proceedings.
 7 Each current and former employee of Suttell is a witness or potential as to which
 8 duties were performed by each employee and the amount of time spent to complete
 9 particular tasks, the fees for which were ultimately passed to defendants. Plaintiff
 10 needs this information in order to ascertain whether there is any possibility that the
 11 attorney's fees charged by Suttell to defendants in its State Court debt collection
 12 proceedings could be reasonable.

13 The Washington Supreme Court has held that "reasonable attorney fees"
 14 includes reasonably, necessary expenses of litigation. *Panorama Vill. Condo.*
 15 *Owners Ass'n Bd. of Dirs. v. Allstate Ins. Co.*, 144 Wn.2d 130, 142, 26 P.3d 910
 16 (2001); *Louisiana-Pac. Corp. v. Asarco, Inc.*, 131 Wn.2d 587, 605, 934 P.2d 685
 17 (1997) (Sanders, J., concurring). The services of a "qualified legal assistant," such
 18 as those utilized by Suttell in its collection cases, may be included in an attorney
 19 fee award. *Id.* To fit into this category:

20 (1) the services performed by the non-lawyer personnel must be legal in
 21 nature;
 22
 23
 24
 25

1 (2) the performance of these services must be supervised by an attorney;

2 (3) the qualifications of the person performing the services must be
3 specified in the request for fees in sufficient detail to demonstrate that the person is
4 qualified by virtue of education, training, or work experience to perform
5 substantive legal work;
6

7 (4) the nature of the services performed must be specified in the request for
8 fees in order to allow the reviewing court to determine that the services performed
9 were legal rather than clerical;
10

11 (5) as with attorney time, the amount of time expended must be set forth and
12 must be reasonable; and
13

14 (6) the amount charged must reflect reasonable community standards for
15 charges by that category of personnel..
16

17 *Absher*, 79 Wn. App at 845.

18 Since Washington Courts allow attorney fees for work performed by staff,
19 and Suttell has claimed that its reasonable fee is based in part on work performed
20 by its non-attorney staff, analysis of the reasonableness of the fees charged by
21 Suttell for its non-attorney work will necessarily include the information requested
22 in Interrogatories, five (5) and eight (8), and Request for Production three (3) with
23 respect to all employees. Additionally, until the discovery is fully answered,
24
25

1 Plaintiff cannot determine whether work was performed by Suttell's attorneys or
2 non-attorney staff, a fact that is essential to a determination of reasonableness.
3

4
5 Interrogatory #11 and Request for Production #13

6 Suttell has provided a list of cases from 2005 to the present that involved an
7 alleged debt that originated with Spiegel Brands, Inc. However, the provided cases
8 are only those where Suttell obtained a judgment on behalf of one of the Midland
9 entities. Plaintiff has requested the additional information for all accounts and
10 Suttell has not responded to the following, save for its objection:
11
12

- 13 1. Address of the defendant;
- 14 2. Phone number of the defendant;
- 15 3. Disposition of the case;
- 16 4. Amount of judgment obtained;
- 17 5. Amount of judgment paid;
- 18 6. Date of last payment on the account;
- 19 7. Date of last charge to the account; and
- 20 8. Date of default on the account
- 21
- 22

23 Interrogatory #12

24 No additional response has been provided by Suttell.
25

Interrogatory #13

1 No additional response has been provided by Suttell.

2 Interrogatory #16

3
4 Suttell has provided a list of Washington cases in which it sought default
5 judgment. However, it is unclear whether Suttell admits that it requested an
6 attorney fee based on 1.8 hours of services in every case where it sought default.

7 In addition, Suttell has not provided the:

- 8
- 9 1. Case name;
 - 10 2. Case number;
 - 11 3. Defendant's address;
 - 12 4. Jurisdiction;
 - 13 5. Disposition;
 - 14 6. Amount of judgment obtained;
 - 15 7. Amount of judgment paid; or
 - 16 8. Amount of attorney fee awarded and included in judgment.
- 17

18
19 Request for Production #6

20 Suttell has provided no additional responses.

21
22 Request for Production #15

23 Suttell has provided no additional responses.

24
25 Request for Production #22

Suttell has provided no additional responses.

Request for Production #24-29

Suttell has provided no additional responses.

Request for Production #31-37

Suttell has provided no additional responses.

Request for Production #4, #5

Although Suttell produced a contract between Suttell and Midland Credit Management, despite Suttell's counsel's assurance no contract between Suttell and Midland Funding, LLC has yet been provided. In addition, no contract except the Suttell/Midland Credit Management contract has been produced.

RPC 1.15(c)(1) states: "A contingent fee agreement shall be in a writing signed by the client". Suttell alleged in the Gray state court proceeding that it represents Midland Funding, LLC. Suttell made no representation that it represented Midland Credit Management. Thus, it would seem that one of four possibilities exist for the reason that Suttell has not provided its fee agreement with Midland Funding, LLC, despite counsel's assurance. Either: (1) Suttell has a fee agreement with Midland Funding, LLC that it has not produced, (2) Suttell does not have a contingent fee agreement with Midland Funding, LLC but does have a contingent fee agreement with Midland Credit Management, (3) Suttell misrepresented to the Washington courts that it represented Midland Funding, LLC when it in fact represented Midland Credit Management, or (4) Suttell has been

1 collecting a contingent fee on its Midland Funding, LLC cases without a written
2 fee agreement.

3
4 *Request for Production #7 -12, #14 & #16*

5 Suttell has provided no additional responses.

6 *Interrogatory #19,#20*

7
8 No additional response has been provided by Suttell.

9
10 The Suttell defendants have agreed to provide additional answers to
11 Plaintiff's Interrogatories and Requests for Production prior to the hearing on
12 Plaintiff's Motion to Compel scheduled for November 2010.
13

14
15 Dated this the 18th day of October, 2010.
16

17
18 *Kirk D. Miller, P.S.*

19 /s/ Kirk D. Miller

20 Kirk D. Miller
21 Attorney for Plaintiff
22 WSBA # 40025
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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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